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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/465,667	12/17/1999	LENNART CEDGARD	ALBIHN-W-3.3	9154

26288 7590 08/27/2004

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EXAMINER
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AFREMOVA, VERA

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 08/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/465,667

Applicant(s)

CEDGARD, LENNART

Examiner

Vera Afremova

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 22-27, 31 and 32.

Claim(s) objected to: none.

Claim(s) rejected: 11, 12, 14-21, 29 and 30.

Claim(s) withdrawn from consideration: none.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

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**Attachment to Advisory Action**

The amendment filed 8/02/2004 under 37 CFR 1.116 is not deemed to place the application in condition for allowance and will not be entered.

The proposed amended is directed to narrowing ranges of tablet friability that are still within the ranges of good manufacturing practice. It is well established in the prior art that compressed tablets have friability of about 0.3 according to good manufacturing practice as demonstrated by the cited prior art, for example: see US 5,536,526 at col. 4, lines 7-10.

In the last office action, pending claims 29 and 30 that depend on rejected claims 11 and 16 were inadvertently included in the group of allowed claims that start with independent claims 22 and 27. Examiner's attempt to resolve the issues and/or to rich applicants has failed because the telephone numbers provided by applicants' representative are outside US.

The status of pending claims (as filed on 10/20/2003) as follows:

Claims 11, 12, 14-21, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,396,631 taken with US 5,536,526; US 5,531,989; US 5,422,346; US 4,021, 545 and US 4,806,368 for the reasons as explained in the last office action.

Claims 22-27, 31 and 32 are free from prior art and allowable.

In response to the applicants' argument sand declaration by Dr. Henning Kristensen it has been explained in the last office action that the increase in bacterial viability have been demonstrated for a mixture of particular species of lactic bacteria in hard tablets as result of substitution of inulin for starch. The scope of the showing must be commensurate with the scope of claims to consider evidence probative of unexpected results. In re Dill, 202 USPQ 805 (CCPA, 1979), In re Lindner 173 USPQ 356 (CCPA 1972), In re Hyson, 172 USPQ 399 (CCPA

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1972), In re Boesch, 205 USPQ 215, (CCPA 1980), In re Grasselli, 218 USPQ 769 (Fed. Cir. 1983), In re Clemens, 206 USPQ 289 (CCPA 1980). It should be clear that the probative value of the data is not commensurate in scope with the degree of protection sought by the claim. The scope of pending claims 29 and 30 is not limited to the use of a mixture of particular species of lactic bacteria in hard tablets with inulin as encompassed by allowed claims 22 and 27. In the last office action, pending claims 29 and 30 were inadvertently included in the group of allowed claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Afremova whose telephone number is (571) 272-0914. The examiner can normally be reached from Monday to Friday from 9.30 am to 6.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached at (571) 272-0926.

The fax phone number for the TC 1600 where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Vera Afremova

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August 25, 2004



**VERA AFREMOVA  
PRIMARY EXAMINER**